

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/09/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss
Deputy

LC 2001-000085

FILED: _____

STATE OF ARIZONA

LISA B BARNES

v.

YOUNG HO WON

JAMES T VAN BERGEN

PHX MUNICIPAL CT
REMAND DESK CR-CCC

RULING
AFFIRM/REMAND

PHOENIX CITY COURT

Cit. No. 5819676

Charge: 1. DUI
2. DRIVING WITH AC OF .10 OR HIGHER

DOB: 02-22-1960

DOC: 08-13-1999

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since the date of assignment on September 7, 2001, and this ruling is made within 30 days of that date as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Phoenix City Court and the memorandum submitted by counsel.

Appellant, Young Ho Won, was arrested August 13, 1999, and charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(1); Driving with a Blood Alcohol Content of .10 or Higher, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)((2); Speeding, a civil traffic violation, in violation of A.R.S. Section 28-701(A); Failing to Drive Within One Lane, a civil traffic violation, in violation of A.R.S. Section 28-729.1. Appellant, who is a native Korean, filed a Motion to Suppress and Dismiss the case for an alleged violation of his rights to be meaningfully informed by police of his right to obtain an independent chemical test. Appellant claims that he told the police officers twice that he did not understand them and that the police promised to explain to him his right to an independent chemical test; however, the police never did inform Appellant to his satisfaction. Appellant's motion was denied by the trial judge. Unfortunately, no record was made of that proceeding. Appellant moved to supplement the record on appeal and a supplemental hearing was held May 24, 2001, before the Honorable Matt Tafoya, Phoenix City Court Judge. During that proceeding Judge Tafoya found the issue of whether the Appellant understood English to be unimportant in regards to the issue whether the police officers were required to advise Appellant of his right to an independent test. Judge Tafoya stated, "It's good policy, maybe, good PR, but it's not required under the law because of the duplicate test given."¹

¹ Record of proceedings of May 24, 2001.
Docket Code 512

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This Court's review of the trial court's ruling and conclusions of law are *de novo*.² This Court must review the trial court's ruling on a motion to suppress, such as in this case, under an abuse of discretion standard.³

In this case the trial judge correctly concluded, as a matter of law, that the police officers who arrested Appellant were not required to advise him of a right to an independent chemical test because Appellant was provided duplicate breath tests in this case.⁴

IT IS THEREFORE ORDERED affirming the trial judge's denial of Appellant's Motion to Dismiss/Suppress.

IT IS FURTHER ORDERED affirming the judgments of guilt and sentences imposed.

IT IS FURTHER ORDERED remanding this case back to the Phoenix City Court for all future proceedings.

² State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (1996); State v. Johnson, 184 Ariz. 521, 911 P.2d 527 (App. 1994).

³ State v. Emery, 141 Ariz. 549, 688 P.2d 175 (1984).

⁴ State v. Superior Court, 179 Ariz. 343, 878 P.2d 1381 (App. 1994); State v. White, 161 Ariz. 468, 778 P.2d 1365 (App. 1987); State v. Ramos, 155 Ariz. 153, 745 P.2d 601 (App. 1987).